

Service Date: September 1, 1993

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER Of the Application of)	TRANSPORTATION DIVISION
MONTANA RAIL LINK, INC., Missoula,)	
Montana to discontinue agency)	DOCKET NO. T-9984
services at Garrison, Montana and)	ORDER NO. 6241
dispose of the facility.)	

PROPOSED ORDER

APPEARANCES

FOR THE APPLICANT:

Edward A. Murphy, Datsopoulos, MacDonald & Lind, P.C., 201
West Main Street, Missoula, MT 59802

FOR THE COMMISSION:

Ivan C. Evilsizer, Staff Attorney and Wayne Budt, Transpor-
tation Division Administrator, 1701 Prospect Avenue, P.O. Box
202601, Helena, Montana 59620-2601

BEFORE:

DAVE FISHER, Commissioner & Hearing Examiner

The Hearing Examiner, having taken evidence and being fully
advised in the premises, issues the following Proposed Findings of

Fact, Conclusions of Law, and Order pursuant to Section 2-4-621, MCA.

BACKGROUND

1. On December 7, 1992 Montana Rail Link, Inc. (MRL) filed a Petition with the Montana Public Service Commission (Commission or PSC) for authority to discontinue its agency and dispose of its facility at Garrison, Montana.

2. On February 18, 1993 the PSC served Notice of a Public Hearing to be held on March 19, 1993. The hearing was held as noticed, at the Garrison School Gym in Garrison, Montana. MRL filed a Brief on May 10, 1993.

SUMMARY OF EVIDENCE

Montana Rail Link

3. Mr. Orson Murray, MRL Operations Planning Manager, testified that MRL acquired the mainline track from Phosphate to Tobin, Montana on October 13, 1992, including the Garrison depot, which is currently staffed by one MRL employee during daytime hours. MRL does not serve any shippers from the Garrison agency.

During the time MRL has operated the agency, no rail traffic has originated or terminated at Garrison. Mr. Murray also conducted a study of Burlington Northern records and concluded that no BN

traffic had originated or terminated at Garrison since 1989. See MRL Exh. 1 and TR, pp. 9-11.

4. Mr. Murray described the MRL Customer Service Center in Missoula, Montana. This Center handles requests for cars, billing, tracing, demurrage and other matters for MRL customers, and is available by a toll free 800 telephone number. MRL also sends employees into the field to talk to customers, if a problem arises.

5. Mr. Murray stated that the MRL agent at the Garrison depot does not have any responsibilities with respect to customer service, the handling of hazardous materials, or the interchange of MRL with Montana Western Railroad at Garrison. He stated that he saw no need for the agent at Garrison, because customer service work is handled by the Customer Service Center in Missoula, operations are under the control of the trainmaster in Helena, and the interchange of traffic is handled by Montana Western and MRL train crews.

6. Mr. Murray was recalled to testify following Mr. Heikkila, and identified MRL Exhibit 6, describing hazardous materials loads through Garrison during two one-month periods. In November of 1992 there were 42 loaded hazardous materials cars, and 73 in February of 1993.

7. Mr. Denny Meyer, MRL Manager of Customer Service,

oversees the clerks which handle customer relations at the MRL Customer Service Center in Missoula. He generally described the operations of the Center. It is available to serve customers 24 hours per day, seven days per week, by a toll free 800 telephone number. Five clerks are on duty at the Center during the day, and two at night (a total staff of 20 clerks). Mr. Meyer described the customer services system designed to handle inquiries and problems regarding car tracing, car distribution/ordering, defective cars, billing, switching, damage claims, and demurrage. The Center has access to the same computer systems used by Burlington Northern Railroad, and it is located immediately adjacent to the MRL Operations/Dispatch Center.

8. Mr. Meyer stated that there are no MRL customers served at Garrison, and none known in the foreseeable future.

9. Mr. Michael Lemm, MRL Trainmaster in Helena, is in charge of all MRL operating and clerical personnel from Phosphate to Bozeman, Montana (which includes Garrison), and is the supervisor for all train crews and operations within that territory.

10. Mr. Lemm stated that the Garrison agent does not have any "agency-type" or customer related duties. Mr. Lemm and his assistants in Helena are available and routinely address customer inquiries.

11. Mr. Lemm described the interchange of traffic between

MRL and Montana Western Railroad at Garrison. He stated that the agent located at Garrison "does not have anything to do with" the interchange. Montana Western brings cars to Garrison and sets them out to Track 4 or 5 in the yard in Garrison. MRL sets cars out for Montana Western on Track 1 or 2. This interchange of traffic between the two railroads occurs on a daily basis. Montana Western faxes a list of interchange cars to MRL's office in Missoula. MRL train crews can get a list of interchange cars from a computer in either Missoula or Helena, which includes the consist and weigh bills. To Mr. Lemm's knowledge, there have not been any problems with the interchange at Garrison.

12. Mr. Lemm stated that "failed equipment detectors" and "dragging equipment detectors" are located on the mainline at Jens (14 miles west of Garrison) and Elliston (17 miles east of Garrison), which electronically check for certain problems on passing trains. He also stated that the MRL General Code requires crew members to thoroughly inspect a passing train (roll-by inspections), but that station agents are not required to perform such inspections.

13. Mr. Brian Heikkila, MRL Director of Training Rules and Safety, testified that "there are occasions" when hazardous materials are contained on rail cars interchanged between MRL and Montana Western at Garrison. He also stated that the Garrison

agent does not have any responsibility with respect to the interchange.

14. Mr. Heikkila identified MRL Timetable #5 (MRL Exh. 2), a portion of which governs hazardous materials (based upon Federal regulations), and is used by MRL employees for guidance and reference in the field. It is required to be in the possession of all train crews. Shipping papers for hazardous materials must contain a description of the commodity, an emergency telephone number, car placarding requirements, and information on how to handle the hazardous material in the event of a leakage or other emergency (MRL Exhibit 3 is an example of shipping papers for hazardous materials). A train crew must have such shipping papers in their possession when transporting hazardous materials. The Timetable also contains inspection requirements which apply whenever a car containing hazardous materials is picked up (regardless of whether an interchange point). He also described the corrective measures a train crew would take upon discovering a problem with a hazardous materials car. Train crews are also required to have a copy of an emergency response guide (U.S. Department of Transportation publication DOT 5800, MRL Exh. 4) for crew reference, and to provide to emergency personnel responding to a hazardous materials incident. The weigh bills which accompany hazardous materials cars also contain handling information

(an example is MRL Exh. 5). Train crews are required to inspect the interchanged cars before leaving Garrison, and do not leave unless all weigh bills, consists, and placards are present and match the cars. MRL crews are tested on these and other rules and regulations at least every other year. MRL and Federal Railroad Administration officials also conduct field observations and testing of personnel.

15. Mr. Heikkila also said that the agent in Garrison is not necessary to fulfill MRL's responsibilities with respect to hazardous materials. When MRL sets out a hazardous materials car at Garrison for Montana Western to pickup, the necessary paperwork is left in the Garrison depot or transcribed electronically to Montana Western. When Montana Western picks up the car, their crew then checks to make sure the necessary paperwork is present and performs other inspections and checks before departure. The same procedure is followed for cars being transferred from Montana Western to MRL. No difficulties have been encountered in MRL and Montana Western's working relationship with respect to the interchange; and, no unique hazards exist at Garrison with respect to hazardous materials. Some switching is performed at Garrison. The Garrison agent does not have any responsibility with respect to roll-by inspections.

16. On cross-examination, Mr. Heikkila stated that the

hazardous materials on rail cars passing through Garrison include liquified petroleum gas, chlorine, some acids, and other petroleum products. He also stated that the typical size of a train crew has been reduced from five to two from 1969 to the present.

Public Testimony

17. Mr. James T. Mular, Regional Legislative Director for the Transportation Communications International Union testified in opposition to MRL's Petition. He conducted an investigation in January and February of 1993 regarding the types of hazardous materials passing through the Garrison and Silver Bow interchanges, observing: 9 carloads of benzopyrene, 15 cars of methyl alcohol, 3 cars of hydrogen sulfide liquid, one car of molten sulphur, 9 cars of sodium hydrosulfide, 25 cars of phosphoric acid, one car of yellow phosphorous, and five cars of sodium hydroxide solution. He stated that some of the cars could have been empty, but even they contain residual hazardous materials and were placarded as hazardous materials cars.

18. Mr. Mular described the equipment present at the Garrison depot prior to the time MRL acquired the agency from BN (October 1992). He stated that the volume of hazardous materials interchanged or handled at Silver Bow from 1984 through March of 1986 totalled 4,082 carloads (based upon a letter from Union

Pacific to the PSC dated May 12, 1986). He cited the need to consider the public health and safety of the non-shipping in this case in light of the danger from hazardous materials, based upon the PSC's decision in the Union Pacific Silver Bow agency case. PSC Order No. 6036a, .. 26-27 and TR, pp. 46-47.

19. Mr. Mular provided demographic and geographic information regarding the town of Garrison and the railroad depot facilities (See TCU Exh. A). He described the facilities and equipment available to the Garrison Volunteer Fire Department. The Powell County disaster emergency services coordinator is based in Deer Lodge, 14 miles from Garrison. A residential area of approximately 15 to 20 structures is located across the road from the rail yard. Garrison has 89 registered voters and less than 200 inhabitants.

20. Two crossing signals are located in Garrison, one maintained by MRL and one by Montana Western. According to local residents interviewed by Mr. Mular, a substantial number of automatic crossing signal failures have occurred, including consistent failures of the MRL crossing. On cross-examination, Mr. Mular stated that residents reported to him that the automatic crossing signals (gates and lights) have activated when no train was approaching.

21. The equipment currently present in the Garrison depot

includes: a two-way radio for communication with train crews, two telephones, and a FAX machine. Mr. Mular stated that the depot is **not** currently equipped with: hazardous materials placards, a U.S. Department of Transportation hazardous materials manual, a copy of the Bureau of Explosives Tariff BOE 6000, car seals, a computer, or yard inventory forms. Prior to October, 1992 when MRL acquired the Garrison depot from BN, the depot equipment included a computer linked to the BN compass main frame computer.

22. Mr. Mular described the current agent employment situation at Garrison. The depot is staffed by one MRL agent, who lives in Missoula and works in Garrison from 7:30 a.m. to 3:30 p.m., Monday through Friday. She has never received training with respect to computer car movement checks, yard checks, or hazardous materials. No other MRL employees are stationed in Garrison. Section crews are located in Drummond (20 miles west) and Blossburg (20 miles east). Prior to October, 1992, BN staffed a dualized Garrison-Phosphate agency. The BN agent's duties included entering interchange data into the computer, verifying worksheets, correcting misplaced cars, checking the yard for improperly placarded cars or other visible problems, and performing weigh billing, demurrage and car ordering functions for the Phosphate mines.

23. Mr. Mular stated that the interchange traffic arrives

from Montana Western approximately 2:00 or 3:00 p.m. each day, and he described the interchange operations which occur between MRL and Montana Western at Garrison. Both railroads perform switching activities while the agent is on duty. The interchange traffic from Montana Western lays over in the Garrison yard from approximately 5:00 p.m. to 7:00 a.m. the next day.

24. Mr. Mular also described a problem with three carloads of Talc from Sappington, Montana which occurred after the Three Forks agency was closed. TR pp. 53-54.

25. The following Exhibits were admitted during Mr. Mular's testimony:

TCU Exhibit A: Diagram of Garrison rail yard

TCU Exhibit B: Letter from J.N. Vargason (Union Pacific) to Wayne Budt (PSC) dated May 12, 1986

TCU Exhibit C: Letter from Wayne Budt (PSC) to D.J. Smith (Union Pacific) dated May 1, 1986

TCU Exhibit D: Association of American Railroads, Bureau of Explosives, Silver Bow, Montana "Station Yard Inspection" Form, dated July 13, 1985

26. On cross-examination, Mr. Mular stated that Montana Western employs a trainman who drives from Anaconda and works about "two hours" in the Garrison yard (Mr. Mular did not state how many days per week).

27. Mr. Robert Stevens of Bozeman, Montana testified on behalf of the National Association of Rail Passengers (N.A.R.P.),

Region 8. N.A.R.P. took no position on the request by MRL to discontinue the freight agency at Garrison. However, Mr. Stevens expressed the serious concerns of N.A.R.P. with respect to MRL's Petition to "dispose" of the depot building at Garrison. He expressed concern regarding the potential demolition or deterioration of the depot building, in light of the likelihood of renewed rail passenger service. He briefly described the history of rail passenger transportation between Missoula, Butte, and Helena; and stated that Garrison is the junction where traffic from west divides toward Butte and Helena. No rail passenger service has been offered in Montana since 1979. He also described the decreased availability of commercial air transportation in Montana. He described the possible rail passenger schedules connecting Butte, Missoula, and Helena with Spokane, Portland and Seattle, and the strategic importance of the Garrison junction to passenger service. Garrison would probably be the only stop between Missoula and Helena. The deterioration or demolition of the Garrison depot building would eliminate the possibility of a passenger stop in Garrison, adversely affecting the rail connectivity of Butte, Helena, and other Montana cities. It would also delay the renewal of rail passenger service, because planners would not be able to count on Butte area passengers to bolster revenues.

28. Mr. Stevens also discussed the possibility of expanded rail passenger service and recent developments in Oregon and Washington. He stated that what happens at Garrison will set the tone for the whole state with respect to rail passenger service well into the next century. (See NARP Exh. 1.)

29. On cross-examination, Mr. Stevens discussed the location of the Garrison depot (the building is located between the mainline and the yard) in regard to passenger access safety concerns.

30. Mr. Dave Meier of Deer Lodge, Montana testified. He was employed by the Northern Pacific Railroad beginning in 1947, and retired from BN in 1990. He worked as the Garrison depot agent for about 30 years (1960-1990). He described his duties as the Garrison depot agent, which included compilation of interchange car data, hazardous material information, and car inspections (including roll-by inspections). He stopped trains at Garrison for various safety reasons, including dragging brakes, hot boxes, shifted loads, and sticking brakes. An inspector from the Federal Railroad Administration would come to the Garrison depot two or three times per year, checking for mechanical defects and placarding of hazardous materials cars (including empties). BN provided him with a supply of hazardous materials placards, and it was his responsibility to check for proper placards on

hazardous materials cars, and he replaced them as necessary. He stated that an employee needs to be at the yard in person to insure correct reporting of interchange car data, because of the accuracy of personal observation. He also described the problems associated with properly tracking weigh bill and car number information.

31. Mr. Meier stated that BN and the FRA stressed the importance of proper handling of hazardous materials, for the well being of everyone. While he was the Garrison agent, he discovered two carloads of hazardous materials which were leaking. During his yard inspections, he also discovered numerous broken angle bars and a broken switch.

32. Mr. Ken Fleming, Powell County Commissioner, testified. He stated that the closure of the Garrison depot would not fiscally affect Powell County, Deer Lodge or Garrison. There are no shippers who would be affected by the closure. The plant in Phosphate would not be affected.

33. Mr. Fleming stated that the hazardous materials' cars at Garrison could pose a possible hazard. He worked in the Milwaukee Road rail yards for 10 years, and described some problems and safety hazards that can arise in rail yards, including leaking cars.

34. Mr. Fleming described the limitations of the emergency

response personnel in the Garrison area. The Garrison fire hall has a budget of \$5,000; which is not enough for training or protective clothing to handle hazardous materials incidents. His opinion was that the Garrison fire personnel could not adequately respond to a hazardous materials accident. He asked that the PSC "take a good hard look at this" with respect to the safety of the Garrison residents.

35. Mr. Bernard Barton, Disaster and Emergency Services (DES) Coordinator for Powell County, testified. He reinforced the safety concerns expressed by Mr. Fleming, stating that the local Garrison fire department is very limited in what it could do in the event of an emergency. A mutual aid agreement provides that Deer Lodge fire personnel would respond to a Garrison incident, but they are 11 miles away and not that well equipped either. He stated that they would rely upon the Railroad to handle any hazardous materials emergency occurring in Garrison. If an agent is based in Garrison, the response to an emergency by the Railroad would be a little bit quicker.

36. On cross-examination, Mr. Barton stated that his concern about the presence of the agent related to the speed of notification. He also said that both Deer Lodge and Powell County personnel have been given emergency numbers to call at MRL.

37. Mr. Ed Biggs testified on behalf of the Brotherhood of

Maintenance of Way Employees (who maintain the rail lines). He worked on the line through Garrison before it was sold to MRL. He described the previous railroad employment situation at Garrison.

At one time, the Garrison depot was headquarters for the agent and a section consisting of one foreman, one truck driver and two laborers. At one time, there was also a signal maintainer at Garrison. These employees would be the first responders in the case of an emergency. They all had hazardous materials training, including knowledge of what to do in case of a derailment or other emergency.

38. Mr. Biggs testified further that local railroad personnel are able to locate and provide information to local fire department and police personnel in the event of an emergency. He has observed the Garrison agents (Mr. Meier and his successor) inspect the Garrison yard on a routine daily basis. Such yard inspections check for car location problems and for leakage of cars. Personal observation of the yard is essential, especially because of the interchange hub at Garrison.

ANALYSIS

39. The Montana Code requires railroad companies operating in the state to staff and maintain facilities for the shipment and delivery of freight and passengers. . 69-14-202(1), MCA. However, a railroad company may demonstrate to the PSC that a particular facility is not "required for public convenience and necessity;" and the PSC may authorize the closure, consolidation or centralization of such facility. . 69-14-202(2), MCA. In 1989, the Montana Legislature added the following language to this statute:

In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service.

. 69-14-202(2), MCA. No fixed rule can be used to determine whether or not the "public convenience and necessity" requires a particular service to be performed. The facts in each case must be separately considered, and the question determined from those facts. See Chicago, Milwaukee, St. Paul and Pacific Railroad Co v. Board of Railroad Commissioners, 126 Mont. 568, 225 P.2d 346 (1953).

40. Prior to the 1989 amendment to . 69-14-202, MCA, the PSC principally limited its analysis in these cases to a balancing of the burdens on the railroad from maintaining an agency, against the burden on shippers which would result if the agency were closed. See e.g. In the Matter of the Application of Burlington Northern Railroad to Discontinue its Agency at Opheim and Glentana, PSC Docket T-9300, Order No. 5938, .19-22 (1989).

41. The 1989 amendment to . 69-14-202(2), MCA, required the PSC to expand the scope of its analysis in these cases, to specifically include impacts of the proposed closure upon persons other than shippers. The PSC has discussed and explained this expanded analysis in Orders issued after the effective date of the 1989 legislation (May 5, 1989). See e.g. In the Matter of the Application of Burlington Northern to Discontinue its Agency at Culbertson/Bainville, Montana, PSC Docket No. T-9264, Order No. 5929a, .49, p. 16 (December 18, 1989), and In the Matter of the Application of Burlington Northern to Discontinue its Agency at Terry, Montana, PSC Docket No. T-9247, Order No. 5961, .32, p. 12 (October 30, 1989). In another 1989 Order, the PSC stated:

For the Commission to deny an application of this kind, primarily on the basis of impact on persons other than shippers, it needs to be convinced either 1) that, in the absence of an agent, the community will experience serious safety problems as a result of railroad operations, or 2) will experience

other significant problems related to railroad operations that an agent is uniquely able to prevent or solve.

In the Matter of the Application of Burlington Northern to Discontinue its Agency at Hysham, Montana, PSC Docket No. T-9182, Order No. 5866, p. 15 (December 11, 1989).

42. The PSC has a responsibility to scrutinize public safety in this proceeding, as it relates to the closure of the agency and removal of the agent. In 1992, the PSC issued orders which further clarify the appropriate analysis to be applied following the 1989 legislation: "In considering safety within the public convenience and necessity analysis, the Commission examines whether the local agent by defined duties or a course of conduct provides an essential safety function which is necessary to provide adequate rail service." In the Matter of the Application of Burlington Northern to Discontinue its Agency at Sidney, Montana, PSC Docket No. T-9632, Order No. 6094, p. 6 (April 8, 1992). The particular safety problems associated with the handling of hazardous materials at a railroad interchange point was addressed in some detail in the 1992 *Silver Bow* decision. The PSC reiterated the test expounded in the *Hysham* case:

In the absence of opposing shipper witnesses the Commission will not deny an application unless it is convinced that the nonshipping public will either 1) face serious safety risks in the absence of the agent; or 2)

experience other significant problems related to railroad operations that an agent is uniquely able to prevent or solve.

In the Matter of the Application of Union Pacific to Relocate Agency Services from Silver Bow, Montana to St. Louis, Missouri, PSC Docket No. 9447, Order No. 6036a, .22, p. 7 (January 21, 1992). The PSC then added: "[t]he primary nonshipping concern involved public health and safety. This concern focused on the ability of UP to respond to situations affecting public health and safety, especially hazardous materials accidents, without someone on-site." *Id.* at .27, p. 10. Based upon the facts of that case, the PSC held that the Silver Bow agency must remain open based upon both the shipping needs of the Port of Montana Port Authority and the agent's role in responding to hazardous materials accidents. *Id.* at pp. 8-11.

43. The PSC must apply the standards of analysis established in the above cited decisions to the facts of this case. First, the Commission must examine any testimony presented by shippers expressing a need for the agency (the Commission accords great weight to such testimony). Pursuant to Commission precedent, this is the threshold area of inquiry, both before and after the 1989 statutory change. In this case, the record is devoid of any shipper testimony. Therefore, public convenience and necessity does not require the Garrison agency to remain open

for the purpose of serving the needs of the shipping public.

44. After the above analysis, the inquiry turns to the needs of the nonshipping public, in light of the 1989 statutory change. In order to justify the continued operation of the agency in the absence of shipper need, a sufficient showing must be made of either serious safety risks or significant operational problems which would arise as a result of the absence of an agent. Considerable evidence was presented at the hearing regarding the potential safety risks to the nonshipping public attributable to MRL's transportation of hazardous materials through Garrison. Based upon the evidence presented, approximately 700 hazardous materials cars are interchanged at Garrison per year, carrying a wide variety of volatile and deadly materials. See MRL Exh. 6. Descriptions of these lethal materials are contained in the U.S. Department of Transportation publication DOT 5800. MRL Exh. 4. For example, in the event of an accident involving Hydrogen Sulfide, DOT 5800 states: "Poison; **extremely hazardous**. May be fatal if inhaled or absorbed through skin." For Hydrogen Sulfide and Methanol, DOT 5800 states: "Vapor explosion and poison hazard indoors, outdoors, or in sewers. ... Structural firefighters' protective clothing is **not** effective for these materials. **Isolate for 1/2 mile in all directions if tank, rail car, or tank truck is involved in fire.** ... Do not touch or walk through spilled

material; ..." DOT 5800, Guide Nos. 13 and 28, MRL Exh. 4. For Methanol, DOT 5800 further states: "Fully-encapsulating, vapor-protective clothing should be worn for spills and leaks with no fire." *Id.* at Guide No. 28. For Hydrogen Sulfide, DOT 5800 advises the isolation of an area 1,500 feet in all directions, and the protection of persons downwind five miles when no fire is involved (for even a small spill). *Id.* at "Table of Initial Isolation and Protective Action Distances." These materials would be extremely hazardous to the persons and property located in close proximity to the Garrison rail yard.

45. Another important safety consideration is the lack of adequate emergency response facilities in the Garrison area. See TR, pp. 74-79. An accident involving the hazardous materials shipped by MRL through Garrison on a regular basis would require equipment and manpower far beyond the capabilities of the Garrison Volunteer Fire Department. The evidence indicates that the Deer Lodge emergency response capabilities (11 miles away) are also limited. See testimony of Bernard Barton, TR, p. 76.

46. The Commission is concerned about the safety hazards to the Garrison area from the operations of MRL and Montana Western, due to the extremely dangerous materials being transported and interchanged on a regular basis. However, the Commission is unable to conclude based on the record in this case, that these

hazards would be significantly mitigated by the presence of an agent. The evidence does not indicate that the agent is specially trained in the handling of hazardous materials; and, although rail traffic passes through Garrison at all hours, the current agent lives in Missoula and only works in Garrison from 7:30 a.m. to 3:30 p.m. Monday through Friday. See Testimony of Jim Mular, TR p. 49. Traffic containing hazardous materials regularly lays over in the Garrison yard overnight. *Id.* at pp. 50-51. In conclusion, applying the standards of the *Hysham* and *Silver Bow* Orders, the safety risks present at Garrison will not significantly increase in the absence of an agent, and the agent is not uniquely qualified to prevent or solve the safety risks present. The community will not experience serious safety problems as a direct result of the absence of an agent. The record does not establish that the Garrison agent, by defined duties or a course of conduct, provides an essential safety function which is necessary to provide adequate rail service. Therefore, the concerns of the nonshipping public fail to establish that the public convenience and necessity requires the continued presence of the Garrison agent.

47. The testimony presented by Mr. Stevens of the National Association of Rail Passengers (N.A.R.P.) cites the importance of the Garrison depot in the event of the reintroduction of rail

passenger service to Montana. See Paragraphs 28-30 above, and TR pp. 61-69. The PSC agrees that the Garrison junction and depot would be beneficial and advantageous to the provision of rail passenger service. But, no such service has been offered in Montana since approximately 1979, and no concrete evidence was presented that its return to Montana is imminent or even likely in the foreseeable future. Therefore, the Commission finds that the value of the Garrison depot to rail service is too speculative to consider in this proceeding.

CONCLUSIONS OF LAW

48. The Montana Public Service Commission possesses jurisdiction over Montana Rail Link, Inc. pursuant to Title 69, Chapter 14 of the Montana Code.

49. The PSC has provided proper notice and an opportunity to be heard by all interested parties in this Docket, pursuant to Montana law. Title 2, Chapter 4, MCA.

50. In weighing the considerations set forth in . 69-14-202(2), MCA, the PSC finds that the public convenience and necessity does not require the Garrison agency to remain open.

ORDER

IT IS HEREBY ORDERED that the Application by Montana Rail Link is GRANTED, and MRL is permitted to discontinue its operation of the depot at Garrison, Montana and dispose of the building.

In light of the safety concerns present in the Garrison area attributable to MRL and the transportation of hazardous materials in particular, MRL should perform the following public services and submit a report to the PSC verifying completion within three months after the issuance of the Final Order in this case:

(a) Contact all of the local emergency response agencies in Garrison and Deer Lodge, and verify that each such agency is aware of the 800 telephone number to be used in the case of a rail emergency;

(b) Provide basic emergency response training to all of the local emergency response agencies in Garrison and Deer Lodge, with respect to hazardous materials.

(c) Provide local emergency response agencies in Garrison and Deer Lodge a listing of the types of hazardous materials interchanged through Garrison during the 12 months prior to the service date of this Order.

MRL must apply . 69-14-1001, MCA, as required.

The Commission encourages MRL, prior to any disposal of the Garrison depot building, to first make a determination as to

whether the building is of historical significance, and take action to preserve the building if appropriate; and secondly, to allow local government agencies in the area an opportunity to utilize the building. MRL is also requested to inform the Commission in writing of the time and nature of the disposition of the building.

IT IS FURTHER ORDERED, pursuant to Section 2-4-621, MCA, that this is a proposed order only. Any party has the opportunity to file exceptions to this initial decision, present briefs, and make oral arguments before the full Commission. Exceptions and supporting briefs must be filed with the Commission within twenty (20) days from the date of service of this proposed order. Briefs opposing exceptions may be filed within ten (10) days thereafter.

Done and Dated this 31st day of August, 1993.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Commissioner
& Presiding Officer

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: This Proposed Order is a proposal for decision. Each party has the opportunity to file exceptions, present briefs, and have oral argument before the PSC prior to Final Order. See, Section 2-4-621, MCA. Exceptions and briefs must be filed within 20 days of the service date of this Proposed Order. Briefs opposing exceptions must be filed within 10 days thereafter. Oral argument, if requested, must be requested at or prior to the time of briefing. See, ARM 38.2.4803 and 38.2.4804.